



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. EDS 13730-25

AGENCY DKT. NO. 2026-39542

**C.B. AND T.B. ON BEHALF OF C.B.,**

Petitioners,

v.

**NEWARK CITY BOARD OF EDUCATION,**

Respondent.

---

**David R. Giles**, Esq., for petitioners

**Isabel Machado**, Esq., and **Christine McGee**, Esq., for respondent (Machado Law Group, attorneys)

Record Closed: December 19, 2025

Decided: January 9, 2026

BEFORE **SUSANA E. GUERRERO**, ALJ:

**STATEMENT OF THE CASE**

Petitioners C.B. and T.B. on behalf of C.B. filed a due-process petition (Petition) asserting that Newark City Board of Education (Respondent or the Board) denied C.B. a free and appropriate public education (FAPE) by offering an inappropriate IEP for the 2025-2026 school year, and by failing to provide an appropriate program and placement

for the previous two school years. Petitioners seek an out-of-district placement as well as compensatory education.

### **PROCEDURAL HISTORY**

C.B.'s parents, C.B.<sup>1</sup> and T.B., filed a petition for due process on or around July 29, 2025. With the consent of the parties, a mediation session was held on August 26, 2025, which did not result in a resolution. The contested case was transmitted to the Office of Administrative Law (OAL), where it was filed on August 28, 2025. The first prehearing conference took place on September 9, 2025, and a hearing was scheduled for November 5, 2025 and November 17, 2025. The parties requested an adjournment of the November 5 hearing date to allow additional time to attempt to resolve the matter, although the parties ultimately did not reach a resolution. The hearing took place on November 17, 2025 and November 18, 2025. The District filed in limine motions to bar Dr. Carol Fiorile's expert report and testimony, and to bar any testimony relating to out-of-district placements, both of which I denied.

At the hearing, the parties requested the opportunity to submit post-hearing briefs. The parties submitted post-hearing briefs by December 15, 2025 and reply briefs on December 19, 2025, as they had agreed, and the record closed at that time.

### **FACTUAL DISCUSSION AND FINDINGS OF FACT**

#### **Background**

C.B. is a seven-year-old student enrolled in the Newark school district. He was diagnosed with autism spectrum disorder (ASD) in 2021, and received Early Intervention Services. C.B. was referred to the Child Study Team and an identification meeting was held in March 2021. He received the following evaluations: social, speech and language (S/L), feeding, physical therapy (PT) and occupational therapy (OT). The S/L evaluation indicated that C.B. presents with a "severe receptive and expressive language delay."

---

<sup>1</sup> While the parent and child share the same initials, any reference hereinafter to C.B. refers only to the student.

C.B. qualified for special education under the category of Preschool Child with a Disability, and his first IEP began in July 2021. After attending ESY that summer, C.B transitioned to a District full-day Preschool Disabled program in September 2021.

A communication board was provided by the District following an Assistive Technology assessment in March 2022. C.B. was largely non-verbal.

A Re-Evaluation Planning Meeting took place in February 2023 because C.B. was aging out of preschool at the end of June 2023. The evaluation plan consisted of conducting educational, psychological, S/L, neurological, and OT evaluations, and a Functional Behavioral Assessment (FBA).

The psychological assessment revealed that C.B. scored significantly below age range in all areas of the Battelle Developmental Inventory. Skills were found to be significantly below age-range in the adaptive, personal/social, communication, motor and cognitive domains. He was noted to have a short attention span, significant language and cognitive delays; and his classroom teacher's ratings reflect his skills to be in the extremely low range.

C.B. was uncooperative throughout the educational assessment. His overall level of achievement was noted to be very low, and his academic skills and academic applications were also very low.

The S/L assessment reveals that he presented with significantly reduced receptive, expressive, and pragmatic language skills that highly impact his ability to access the curriculum and socialize with peers.

The neuropsychiatric/neurodevelopmental evaluation of March 2023 diagnosed C.B. with ASD, with significant impairment in language; and attention deficit hyperactivity disorder (ADHD), combined type.

A FBA was conducted in response to C.B.'s tantrums, where he would drop himself to the floor, flail and shout or cry out. The author of the FBA suggested that discrete trial

teaching, a systematic approach to teaching individuals diagnosed with ASD a variety of skills, including receptive and expressive language skills, social skills, play skills, and more should be considered when teaching C.B. new skills.

An IEP meeting was held in May 2023 and C.B. was deemed eligible for special education and related services based on the results of the evaluations. The IEP was developed in collaboration with C.B.'s parents and their attorney. At that time, C.B. was aging out of preschool and was going to be transitioning into kindergarten in September 2023.

### 2023–2024 IEP and School Year

The 2023–2024 IEP placed C.B. in the Quitman Community School's autism program for kindergarten. The program is housed in a District school building with both special education and general education students, and C.B.'s IEP provides opportunities to transition into a general education classroom for exposure to age-appropriate communication and behavioral models.

The IEP identifies C.B.'s primary disability as autism. He was noted to be non-verbal but able to communicate with few words, and require continuous verbal prompting, hand-over-hand, and picture cues. The IEP provides for special education services, discrete trial learning, OT, PT, and S/L. It also provides for ESY and contains Goals and Objectives and numerous modifications. The IEP notes that C.B. requires assistive technology devices and services, and it provides for choice boards and communication boards/books/cards.

When C.B.'s present levels of functioning were reviewed, strengths noted were that he demonstrated knowledge of the alphabet; was able to identify, by pointing, and name letters and produce a few letter sounds; and he could match letters to objects on certain items.

Records reflect that, during the 2023–2024 school year, C.B. made some progress for certain goals while making no progress or very little progress on others. His Quarter

4 progress report notes that in English Language Arts (ELA) he needs full support to finish his writing assignments. By the end of the school year he was able to count by rote up to ten using number cards and was able to identify numbers one through eight. He was able to trace numbers, but with hand-over-hand support, and was also able to identify several shapes.

Concerning S/L, it was noted that by the end of the school year, C.B. was able to communicate his wants, needs or respond in short and simple utterances, but that the expressive attempts were often spontaneous and not intentional or meaningful. It was reported that he did not appear to be interested in using the communication board during most opportunities.

#### Elizabeth Callahan's Observation and Recommendations

C.B.'s parents expressed concern about his lack of progress, and earlier that school year, the parents and District agreed to retain a BCBA to conduct a program evaluation at Quitman Community School and to identify programmatic recommendations specific to supporting C.B.'s development. The evaluation was conducted by Elizabeth Callahan, BCBA (Callahan), of Behavior Therapy Associates. Callahan has been a BCBA for almost ten years and was qualified as an expert in Applied Behavioral Analysis (ABA). Callahan observed the classroom on two separate occasions in November 2023, for a total of four hours; obtained information from the parents and teacher; conducted interviews, and reviewed records. She issued her report in March 2024.

Based on her observation and assessment, Callahan recommended that C.B.'s educational program be grounded in the science of ABA "to promote educational progress, monitor his progress more effectively, and to ensure that the strategies and supports are aligned with best practices." She recommended that: preschool life skills be incorporated into his educational program to help target critical skills and reduce the likelihood of challenging behavior; C.B.'s Augmentative and Alternative Communication (AAC) device and interventions that prioritize teaching the use of systems of communication should be consistently utilized throughout the day, with carryover strategies to his parents to promote generalization and consistency across environments;

C.B.'s individualized token system be used consistently throughout the school day, as part of a Behavior Intervention Plan (BIP), in light of the challenging behaviors she observed; data be collected more frequently on both skill acquisition and interfering behavior to monitor progress; the school consider receiving consultation support from an experienced professional to assist with ongoing coaching and training for staff on autism and ABA; C.B.'s parents consider working with an experienced therapist or BCBA. A BCBA was not assigned to C.B.'s classroom at Quitman Community School.

Callahan testified credibly that, during her observation, she noticed four instances of elopement. Also, she did not observe data being collected nor the use of a token system or AAC device, only some visuals that were not used consistently.

None of the District's witnesses opined that the program provided in the 2023–2024 school year was appropriate, and it was only on re-direct that the District's special education supervisor testify, very generally, that C.B.'s report card and progress reports that year show progress in subject areas. I **FIND** that Callahan testified credibly concerning her observations, C.B.'s needs, and recommended improvements to his program. Since it is the District's burden of proof and persuasion, I **FIND** that the District failed to show, by a preponderance of the evidence, that the program provided at Quitman Community School during the 2023–2024 school year was appropriate or that he made meaningful progress that school year.

#### 2024–2025 IEP

An IEP meeting was held on June 6, 2024 to discuss Callahan's findings and recommendations, and to address the 2024–2025 school year. C.B.'s parents and their attorney participated in the meeting and an IEP was proposed for the 2024–2025 school year. Another IEP meeting was held on September 30, 2024, and the IEP was amended to reflect, in part, C.B.'s new agreed-upon placement. The parents and the District had agreed to transition C.B. to the District's South Street School for first grade. The parents had expressed concern about C.B.'s lack of life skills and communication, and that they felt he was making no progress. The meeting focused on revising C.B.'s goals and

updating his placement to the self-contained autism classroom at the District's South Street School. Speech was also increased.

While the parents had requested an out-of-district placement, they agreed to this amended IEP and C.B. transitioned to the South Street School's autism classroom in October 2024.

The 2024–2025 IEP places C.B. in a self-contained autism program at South Street School. The IEP provides for OT (twice per week), PT (twice per month), S/L (three times per week—once more than the prior IEP), and ESY. The IEP provides for use of supplementary aids and services, such as picture schedules, flexible schedules, auditory cues, breaking down tasks and manipulatives; and the use of choice boards, communication boards, discrete learning trials, student and staff training on assistive devices, in addition to other supports. This IEP maintained but adjusted goals and objectives in ELA, math, science, social studies, S/L, OT, PT, and social/emotional.

#### South Street School Program and 2024–2025 School Year

The South Street School Autism Program is run by the District in collaboration with Rutgers' Douglas Developmental Disabilities Center (DDDC or Rutgers). The program is rooted in ABA and overseen by a BCBA, through Rutgers. I **FIND** that The District's witnesses, Shelley Bertino, Ed.M., BCBA (Bertino), the BCBA who oversees the implementation of the program, and James Baron (Baron), C.B.'s teacher during the 2024–2025 school year and ESY, testified extensively, and credibly, about the program and C.B.

Bertino is employed by the DDDC and is in the District four days a week, for six hours each day. She consults with the classroom; trains and consults with staff, including the teacher, aides, and administrative teams; and implements assessments and training of the assessments. She also works directly with students, models strategies for staff, oversees programming, monitors data and makes programmatic decisions. She has worked in this program for about four years. Currently, she oversees fifteen students in the program, across three classrooms, including C.B.'s.

Bertino is a BCBA who was admitted as an expert in special education and related services in the area of behavioral issues.

C.B.'s classroom during the 2024–2025 school year consisted of seven students, the teacher, two full-time aides and one part-time aide. Additionally, two Rutgers University students were assigned to the classroom and provided instructional assistance.

When C.B. initially arrived in the South Street Program, Bertino conducted an assessment and reviewed his progress report. This assessment measures independence across a range of fundamental skills within several areas, including communication, self-help and health and safety. He exhibited “no independence” in most areas of communication and in other areas such as toilet training.

Baron, the teacher, was qualified as an expert in special education for preschool and kindergarten students with autism. He is a special education teacher with over twenty years of teaching experience and five years of experience working with the Rutgers program in Newark. Baron opined that this was a very good program for C.B., as he needs, and is getting, an ABA-based program.

Baron testified that while they practiced with C.B. daily on the communication board, it was a challenge for him to use it independently. The use of functional communication was one of C.B.'s goals. Baron testified that C.B. had access to a PECS book during the school year, and that in June, C.B. received an iPad for communication, which he then used during ESY. He testified that C.B. used the visual schedule available to him during the 2024–2025 school year.

C.B. had discrete trials for ninety minutes a day, either one-on-one or in a dyad. Data was recorded during these trials, and progress was monitored. Baron testified how data was tracked on C.B.'s IEP goals, and how this was entered into the system in real time as the trials were taking place, and stored in the ACE (Autism Curriculum Encyclopedia) system. Bertino confirmed that data were collected during discrete trials

that year, but not throughout the day. During the 2024–2025 school year, C.B. did not often use the PECS board outside the discrete trial setting. Bertino testified credibly that during that school year, C.B. was unable to use it independently, and that he did not have a one-to-one aide to help with prompting and support.

Baron testified that C.B. had trouble focusing and when he did not work one-on-one. He also occasionally elopes, and had very mild occasional tantrums. He agreed that C.B. was unable to attend independently for most of the school year.

A token board was not used during the 2024–2025 school year. Baron testified that C.B. did not respond to token boards when they attempted its use periodically throughout the year. He testified that C.B. was not motivated enough by the token system at that time, but was motivated by direct reinforcement, which they did use. Bertino also testified that a token system was not used that year because they wanted to establish direct reinforcement first. They wanted the consistency of that direct reinforcement before adding a token system.

Regarding speech therapy, while the IEP called for three sessions a week, Baron was informed by the therapist that C.B. was only receiving two sessions weekly.

Baron explained that C.B. had a toileting schedule and that they continually tried to find reinforcements for him, but they were unsuccessful. They adjusted the toileting schedule to take C.B. to the toilet more often, but it did not go well and he continued to have accidents.

Baron testified that progress was generally very gradual during the school year, referring to reports that he prepared. He testified that C.B. showed “some progress” between October and June, and specifically in responding to requests for work; responding to greeting and his name; hand washing; imitating gross motor actions and following one-step direction; and attending to social studies and science activities and indicating letter sounds. He testified credibly that he shared this, and other information concerning C.B.’s progress, with the parents. He agreed, however, that progress was

more significant during ESY, when C.B. made consistent progress and met objectives in some areas, consistent with the ESY Progress report.

Dr. Cheryl Myrie (Myrie), a special education supervisor at the District who was qualified as an expert in special education, agreed that in reviewing C.B.'s progress reports for the 2024–2025 school year, he made no progress with regard to the goals and objectives for every related service. She testified, however, that he did make progress in his academic goals, as indicated in the ACE reports.

Bertino testified that if a particular skill is variable or inconsistent, she looks at the student's motivation, and whether staff are implementing the procedures as described. If they are not, additional training and feedback is provided. She testified that when there is an issue with motivation, she may conduct a preference assessment and examine whether the student is missing prerequisite skills. Baron testified consistently with Bertino. In April 2025, she conducted a formal reinforcement assessment to determine whether the items used were, in fact, reinforcing and influencing behavior, and Bertino determined that the items available to him were not. She testified that this was addressed and, currently, there are items that do act or serve as reinforcers, such as sand, bouncing a weighted ball, and jumping on a trampoline.

Bertino testified that modifications were made throughout the year but that the ACE system does not generate a report reflecting that a modification is made. Bertino maintains that data separately.

Baron testified that as the year went on, it became clear to him that C.B. would need a one-to-one aide. He described C.B.'s progress as "very choppy" and inconsistent, which he believes made C.B. a candidate for a one-to-one aide. However, on cross-examination, Bertino agreed that the need for a one-to-one aide surfaced prior to the end of the 2024–2025 school year, and that he could have benefited from one the entire school year.

Four parent training sessions were offered by the District to all parents in C.B.'s program. The training was in a group setting, and C.B.'s parents did not attend any of

them. C.B.'s mother testified that she was unable to attend because they were in-person and conflicted with her full-time job. Bertino agreed that it was important to provide C.B.'s parents with parent training to generalize the skills taught, particularly given the skills lost during the August 2025 break, as discussed below.

### Program Review by Callahan

Per an agreement between the parents and the District, Callahan was retained in October 2024 to conduct another review of C.B.'s program and to assess his progress and how he was adjusting to the new program. She observed the program in mid-November for about four hours, consulted with school staff and the parents, and reviewed records, including an FBA from April 2023, the ACE report, and the amended IEP. Her report is dated December 10, 2024.

Callahan observed C.B. in the classroom and noted that, overall, he demonstrated a need for intensive support, consistent reinforcement, and structured interventions to address behaviors and promote task engagement and skill acquisition. She continued to observe elopement, vocal stereotomy, the mouthing objects and the need for one-to-one support and physical prompts to engage in tasks presented.

Callahan noted that C.B.'s placement change fulfilled many of the recommendations made in her previous evaluation—he is now in an ABA program; there is an increased student-to-teacher ratio; and the use of assessment tools and ongoing data collection represent “significant progress” in addressing C.B.'s educational needs. She noted that many of her prior recommendations were now in place (such as training in ABA from a BCBA and use of standardized skills-based assessment; use of data and graphs to track performance; and evidence-based practices consistent with the science of ABA; and use of ACE software to graph skill acquisition and collect data). She also noted that some of her recommendations were “mostly” in progress, such as collaborating to produce a communication modality that fits his needs and use of assistive technology, and that an AAC device should be consistently utilized throughout the day, with carryover strategies. Callahan noted that other recommendations were not yet in place, such as use of a token system, and she testified that the teacher and BCBA indicated that they

were providing reinforcement for correct responses on a more continuous basis throughout the day when he would engage in a correct response, in addition to providing praise, and that they planned to build skills required for more successful use of the token system, such as establishing visual attending repertoire. Callahan's recommendation about providing consultative support from an experienced professional to coach and train staff members regarding behavior analysis was in place at the time through Bertino. She also noted that data recommendations were in place, which was a marked improvement from the prior program. She noted that C.B. had a shared paraprofessional, and she recommended that this level of support be closely monitored and assessed to ensure it continues to meet his evolving needs, "particularly given the safety concerns related to wandering and elopement."

### 2025 ESY

C.B. attended ESY in 2025, which lasted about five weeks. He was assigned to Baron's classroom, which consisted of three staff members and six students.

Bertino testified credibly how C.B. made progress on his programming while working one-on-one with Baron during ESY, and generalizing previously mastered skills to the new environment. She opined that C.B. made significant progress over the summer--including with regard to responding to greetings and his name, indicating letters by sound and counting using one-to-one correspondence. Data was collected and graphed. Some skills were mastered, and others showed progress. Baron noted that there was noticeable improvement in his on-task and attending behaviors. For skills that were not mastered, they were noted to still be in progress and continued in the fall.

Maladaptive behaviors were also addressed and monitored. C.B. was noted to use an AAC device, but with maximum support from staff. It was still noted that he required a high level of support.

2025–2026 IEP and C.R.’s Classroom

An IEP meeting was held on May 8, 2025 and an IEP was developed for the 2025–2026 school year. In late May 2025, an AAC assessment was made to determine appropriate AAC methods to augment C.B.’s communication. C.B. was noted again to be minimally verbal with severe expressive and receptive language delays and limited spoken language. The report notes that despite the “successful use of a picture communication book,” C.B. continues to present with communication breakdowns which impact his behavior and the picture communication book was noted to be limiting his ability to communicate. It was recommended that C.B. communicate through the means of a high-tech AAC device, and specifically the Proloquo2Go, which was provided on an iPad.

Myrie testified about C.B.’s current placement, where his classroom consists of only three students, and a current one-to-one trained staff-to-student ratio. C.B. currently has a personal aide. The BCBA is there six hours a day, four days a week and works with the teachers directly. Bertino testified that data is now collected throughout the day. Behavioral data is obtained by staff and analyzed by the BCBA. C.B. was noted to engage in vocal and motor stereotomy, and elopement and mouthing objects are other tracked behaviors, but these behaviors declined the first month of school.

Maintenance data taken during the first four days of school shows that C.B. regressed on skills that he had mastered during ESY, but as of late October, he had regained, and was maintaining, the skills he had lost. He is now being prompted with the AAC device.

Toilet training is not being worked on because the District does not have a toilet seat that would allow C.B. to use the toilet. It was noted that C.B. still wore pull-ups and is unable to comfortably sit on the adult toilet available to the class. Bertino testified that there is a toileting protocol that will be implemented once the seat arrives.

Bertino testified that C.B. needed an aide because he required a higher level of intensity for his instruction, and one-on-one instruction--being in a dyad was not sufficient

to keep his focus and make adequate progress. This year, he is getting the letters a lot quicker, and he has made the most progress working one-on-one.

In this program, data is being collected and recorded on a number of target behaviors, as outlined in his IEP, including elopement, dropping, mouthing objects and aggression. Data is also recorded on ACE, and monitored.

Report prepared by Carol A. Fiorile, Ph.D., BCBA-D

Dr. Fiorile was qualified as an expert witness in special education and ABA. She prepared a report dated June 28, 2025.

Dr. Fiorile observed C.B. in his program at South Street School in June 2025. She conducted a home visit; reviewed records, and interviewed staff, the parents, and the home-based BCBA.

Dr. Fiorile reported that during her one-hour observation of C.B. in the classroom, he emitted only one independent response and was physically and verbally prompted throughout the observation. She noted that he demonstrated extremely poor visual attending behavior and emitted non-contextual vocalizations. He also failed to use the PECS book available to him, which suggested to her that he had not been effectively taught how to use it. She also noted that C.B. did not demonstrate any capacity to utilize and/or follow his daily visual schedule. She testified that he has failed to develop a level of independence for regular classroom routines, such as the morning meeting; and he eloped to various parts of the classroom. His eloping was described as severe and an “extreme concern” for safety.

Dr. Fiorile opined that C.B. would be able to tolerate delayed access to a preferred reinforcer, with initial rapid delivery of tokens, after assessing him at home.

Dr. Fiorile testified that C.B. presents with significant deficits in terms of adaptive daily living skills, including that he has yet to be successfully toilet-trained despite a

protracted period of time in which staff in the District ultimately ended their attempts to toilet train him.

In reviewing the IEP for the 2024–2025 school year, Dr. Fiorile notes that the District failed to provide him with even a personal or shared aide, individual instruction, or a pupil-to-teacher ratio of 3:1 or less. She is critical of the lack of use of communication boards, and questioned, based on her brief exposure to C.B., whether he was even able to identify letters as reported by the District. She is critical of the District for failing to adequately teach C.B. to use language functionally, and she criticizes the fact that of the ten goals proposed in this IEP, nine of them were written to include moderate prompting, which, she opined, is unacceptable because a goal cannot be considered met if prompted.

Dr. Fiorile did not observe data being recorded while she was in the classroom. She testified that she did not observe any use of C.B.'s PECS book, nor did he refer to the visual schedule in any "meaningful way." She observed him elope, and that he failed to follow motor movements modeled by others. Dr. Fiorile referred to the ACE reports, which she testified documented that C.B. failed to attend to the elements of the lesson observed, scoring zero percent visual attending behavior. He also failed to attend to art teacher and required full prompts to complete all activities. She testified that C.B. was prompted the entire time she observed, which is not appropriate.

Dr. Fiorile disagreed with Callahan's findings that supervision by a BCBA was in place. She acknowledged that the BCBA was present, but testified that she failed to record data, intervene or respond, and failed to respond when C.B. showed variability in skill performance. She assumed that Bertino had not implemented any intervention, because it was not evident in the graphs, and that she had not conducted any reliability checks to ensure implementation of instruction with procedural integrity or to consider generalization of programming. She disagreed with other findings made by Callahan, including her determination that C.B.'s use of communication was "in progress," because Dr. Fiorile did not observe use of PECS or visual schedule.

Dr. Fiorile was critical of what she perceives to be a lack of data being recorded by the District. She was also critical of the attempts to toilet train C.B., which were put on hold in May 2025, and noting that an alternative method of training was never attempted. She testified that it was unacceptable that the District simply stopped addressing C.B.'s toilet training needs.

Dr. Fiorile concludes that the program offered failed to meet the requirements for a meaningful program of intervention. She also testified that the program was not being implemented properly because, she assumed, there had been no interventions. She opined that the BCBA was responsible for too large a caseload, without knowing how many students she oversees. She opined that failing to achieve toilet training and hand washing after four years fails to meet the standard of personal welfare and functional skills. She opines that C.B. is not provided with the level of support he requires, and that the District failed to provide him with an Assistive Technology evaluation, until recently, and failed to provide individualized parent counseling and training to parents to support generalization of skills.

Dr. Fiorile recommends placement in full-day program that is "fully grounded in the empirically-validated procedures and interventions" of ABA, under daily supervision of BCBA or BCBA-who carries a caseload of not more than five to six students and who can provide at least one-and-a-half hours of program implementation, supervision and staff training and data review. While she provides some examples of out-of-district programs that she opined would be appropriate. Dr. Fiorile also offered other recommendations in her report, including toilet training protocol, weekly parent training, etc.

Dr. Fiorile used handwashing as an example to show that C.B. made no progress from November to April, but then suddenly made progress. She testified that it was too long a time to let a child practice errors without any interventions. She testified that the data showed a lot of variability and no interventions, and that C.B. failed to make meaningful progress in the program. She testified that the program is not reasonably calculated to enable him to make meaningful progress, and she essentially doubted whether C.B.'s program was even an ABA program that was properly supervised.

Dr. Fiorile was also critical of the lack of parent training and efforts to generalize. She opined that the program he was in was not an intensive ABA program because of the failure to properly review data in the graphs, no inter-observer agreements nor interventions applied. She was also critical of the fact that he did not have a one-to-one aide who was at least a registered behavior technician with prior experience and training, nor a twelve-month program of intervention.

On cross-examination, Dr. Fiorile conceded that she did not speak with the BCBA about the charts, and did not ask her if there had been any interventions. Dr. Fiorile also did not observe C.B. during discrete trial instruction. In her report, she suggested that the BCBA did not conduct reliability checks to ensure appropriate implementation of instruction but then conceded that she did not ask her whether there was treatment integrity data.

#### Petitioner's Allegations and Relief Sought

Petitioners allege that the District denied C.B. FAPE during the 2023–2024 school year because the program provided was not reasonably calculated to allow him to make progress, and because he did not make progress. Petitioners allege that the District was aware that C.B. required ABA-based program; a communication board; and goals to promote independence; discrete trial training; toilet training; a one-to-one aide; and parent training. At the hearing, and in petitioners' post-hearing brief, they also assert that the District failed to implement the related services called for by his IEP.

For the 2024–2025 school year, petitioners allege that the program was not reasonably calculated to enable C.B. to make appropriate progress. While ABA services were implemented, petitioners allege that they were implemented poorly-- functional communication training was minimal and inadequate; no communication board was used; and the goals do not promote independence. Petitioners assert that toilet training was ineffectively done and the District should have provided a personal aide and parent training. Petitioners assert that C.B. only received speech twice per week, instead of the required three, and consequently calculated that he missed about forty sessions of speech that year. They also provided a chart with the missed sessions of OT, PT and

speech therapy. C.B.'s goals also show no, or very limited progress and, for the most part, he did not meet his goals.

Finally, the petitioners assert that the IEP for the 2025–2026 school year is inappropriate as it is essentially the same as the earlier IEP and does not offer the level and intensity of instruction that C.B. needs.

The parents are seeking compensatory services for the two years of failing to provide appropriate services—two hours per day for the two years in which he did not receive appropriate ABA services (900 hours of compensatory ABA services to make up for the two years of failure to provide an appropriate ABA program). Alternatively, for related services not provided: 49 sessions of speech; 17 sessions of OT; and 9 sessions of PT. Prospectively, they seek an out-of-district placement.

The District asserts that it provided C.B. with FAPE in the least restrictive environment. They assert that C.B.'s current program provides intensive ABA individualized instructions to meet his needs; it is overseen by a BCBA through Rutgers; and it includes a small class size. There is a teacher, a classroom aide and a one-to-one professional that works with C.B. and the program provides for daily instruction in LA, literacy, math, science and social studies/history, and rotating special classes with opportunities for integration and interaction. Individual OT, PT and S/L services are provided and the reports do show progress in academic goals. The District also notes that the parents agreed to C.B.'s program and they cannot present any evidence that an out-of-district program is the appropriate placement. There is no out-of-district placement to evaluate here, and no testimony or report supporting any placement outside the District. Finally, the District asserts that the petition should be dismissed on a finding of unreasonableness.

#### Additional Findings of Fact

It was clear from the testimony and documentary evidence that C.B. has extensive needs as a mostly non-verbal child with autism, with significant deficits in adaptive daily living skills and communication. While it was reasonable and appropriate for the District

to transition C.B. to the ABA program at South Street School for the 2024–2025 school year, there were aspects of C.B.'s program that did not meet his needs that year.

During the 2024–2025 school year, ABA services were implemented; C.B. received daily instruction in language arts, math, science and social studies, and received OT, PT and S/L services. The program was supervised by a BCBA and I am not persuaded by Dr. Fiorile's criticisms of Bertino, including those concerning Bertino's ability to adequately oversee and implement the program. Skills-based assessments were done; data were collected, graphed and monitored and the ACE system was used to track data and progress. Bertino testified credibly that she reviews the data and she reviews and analyzes when variable progress is noted, and she used interventions.

C.B. had discrete trials every day, and data was collected during this time. I am persuaded by the District witnesses' testimony that C.B. had access to a PECS book which he used during discrete trials but that, despite attempts to have him use it regularly, it was a challenge for C.B. to use it independently. He did use a picture communication book, and near the end of the school year an AAC assessment was made, and it was recommended that C.B. communicate using the Proloquo2GO on an iPad. This was then provided to him.

While the petitioners criticize the District for not using a token system during the 2024–2025 school year, I found Baron and Bertino's testimony persuasive that they periodically attempted its use but that C.B. was motivated by direct reinforcement and that they sought to establish the consistency of direct reinforcement before adding a token system. I am not persuaded by the evidence presented that C.B. was ready and able to use a token system that school year.

Concerning parent training, while the petitioners assert that it was not offered, it was, in fact, offered about four times that school year but not utilized by the parents.

I also **FIND** that while the class size that year was small, and the staff-to-student ratio was not unreasonable, the District should have provided C.B. with a personal aide early in the school year given the fact that: he required constant prompting and lacked

independence (as evident the year before and early that school year); he had difficulty attending; his progress was “very choppy” and inconsistent; he had a tendency to elope; he had challenges with toilet training; and he had other maladaptive behaviors that could have been better, and more consistently, monitored and addressed by the aide. Bertino agreed that the need for a one-to-one aide surfaced prior to the end of the 2024–2025 school year. In fact, once an aide was assigned to him this school year, he showed much improvement.

I also **FIND** that the District failed to provide about forty, or about one-third, of the speech therapy sessions called for in the IEP, and that this constitutes a substantial and significant number of sessions that were not provided.

Finally, with regard to the 2024–2025 school year, I **FIND** that while C.B. may have made “some progress” that school year, as Baron testified, I am not persuaded that he made adequate or meaningful progress. While he made some progress with regard to academic goals, it was “very choppy” and inconsistent, and Myrie herself agreed that he made no progress that year in the goals and objectives for every related service. On the other hand, when more supports were provided and C.B. received more one-to-one instruction in ESY and in the current school year, he made what was described as significant and consistent progress.

This petition was filed in late July 2025, after the 2025–2026 IEP had been offered but before the start of the 2025–2026 school year. The District witnesses provided a very promising update of C.B.’s program and progress, including the fact that C.B. now has a personal aide; there are only three students in the classroom and a one-to-one trained staff-to-student ratio; data is now collected throughout the day and not only during discrete trials; he receives more one-to-one instruction; and his maladaptive behaviors decreased while he is reportedly making more significant progress. However, while I applaud the District for providing C.B. with a personal aide this year, I **FIND** that this is not reflected in the 2025–2026 IEP. The IEP provides for a shared aide rather than a personal aide, and as I found and explained above, I am persuaded that C.B. requires a personal aide. Aside from the District’s failure to provide for a personal aide in the IEP, I am not persuaded that the current program suffers from inadequate BCBA support, that

C.B. requires a year-round out-of-district program, or that the current program itself is inadequate to sufficiently address C.B.'s needs. I **FIND** that aside from the absence of a personal aide, the 2025–2026 IEP appears reasonably calculated to allow C.B. to make meaningful progress in the least restrictive environment.

Further, while the 2025–2026 IEP does include a goal for toileting, and although there is a recognition in the IEP that C.B. “required significant support when using the bathroom and [that] bathroom training has been a challenge,” as of the day of the hearing, the District had not yet implement any toilet training protocol for this second-grader. The fact that the District has failed to address toileting at all since May 2025 is inexcusable. The District has had months to purchase the necessary equipment or make the necessary arrangements to facilitate the implementation of a toilet training protocol, but it has failed to address this very crucial life/social skill.

Finally, I **FIND** that the preponderance of the evidence does not establish that the parents acted unreasonably, as the District alleges.

### **LEGAL ANALYSIS AND CONCLUSIONS**

This case arises under the Individual with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et seq., which makes available federal funds to assist states in providing an education for children with disabilities. Receipt of those funds is contingent upon a state's compliance with the goals and requirements of the IDEA. Lascari v. Bd. of Educ. of Ramapo-Indian Hills Reg. Sch. Dist., 116 N.J. 30, 33 (1989). As a recipient of Federal funds under the IDEA, the State of New Jersey must have a policy that assures that all children with disabilities will receive FAPE. 20 U.S.C. §1412. FAPE includes Special Education and Related Services. 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public school district. N.J.A.C. 6A:14-1.1(d). To meet its obligation to deliver FAPE, the school district must offer an IEP reasonably calculated to enable C.B. to make progress appropriate in light of his circumstances. Andrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. 386 (2017).

The purpose of the IDEA is to ensure that all children with disabilities have access to FAPE that “emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. 1400(d)(1)(A). For a school district to provide FAPE to a disabled child under the IDEA they must develop and implement an IEP — a “comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385, 394 (1985). An IEP is to be developed by a district’s child study team in conjunction with the parents of the child. N.J.A.C. 6A:14-2.3; N.J.A.C. 6A:14-3.7(b).

In short, the Act defines FAPE as special education and related services provided in conformity with the IEP. See 20 U.S.C. § 1401(9). The Act, however, leaves the interpretation of FAPE to the courts. See Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 203 (1982), the United States Supreme Court held that a state provides a handicapped child with FAPE if it provides personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. The Court reasoned that the Act was intended to bring previously excluded handicapped children into the public education systems of the states and to require the states to adopt procedures that would result in individualized consideration of and instruction for each child. Id. at 189.

The Act did not, however, impose upon the states any greater substantive educational standard than would be necessary to make such access to public education meaningful. Id. at 192. In support of this limitation, the Court quoted Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (ED Pa. 1971) and 343 F. Supp. 279 (1972) (PARC), and Mills v. Board of Education of District of Columbia, 348 F. Supp. 866, 876 (DC 1972). Ibid. The Court reasoned that these two cases were the impetus of the Act; that these two cases held handicapped children must be given access to an adequate education; and that neither of these two cases purported any substantive standard. Id. at 192-93.

In addition, the Court noted that available funds need only be expended “equitably” so that no child is entirely excluded. Id. at 193. Indeed, the Court commented that “the furnishing of every special service necessary to maximize each handicapped child’s potential is . . . further than Congress intended to go.” Id. at 199. Therefore, the inquiry is whether the IEP is “reasonably calculated” to enable the child to receive educational benefits. Id. at 206-07.

The Third Circuit has since held that this educational benefit must be more than “trivial.” See Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180 (3d Cir. 1988). Stated otherwise, it must be “meaningful.” Id. at 184. Relying on the phrase “full educational opportunity” contained in the Act and the emphasis on “self-sufficiency” contained in its legislative history, the Third Circuit inferred that Congress must have envisioned that “significant learning” would occur. Id. at 181-82. The Third Circuit also relied upon the use of the term “meaningful” contained in Rowley, as well as its own interpretation of the benefit the handicapped child was receiving in that case, to reason that the Court in Rowley expected the benefit to be more than “de minimis,” noting that the benefit the child was receiving from her educational program was “substantial” and meant a great deal more than a “negligible amount.” Id. at 182.

Nevertheless, the Third Circuit recognized the difficulty of measuring this benefit and concluded that the question of whether the benefit is de minimis must be answered in relation to the child’s potential. Id. at 185. As such, the Third Circuit has written that the standard set forth in Polk requires “significant learning” and “meaningful benefit”; that the provision of “more than a trivial educational benefit” does not meet that standard; and that an analysis of “the type and amount of learning” of which a student is capable is required. Ridgewood, 172 F.3d at 247-48. In short, such an approach requires a student-by-student analysis that carefully considers the student’s individual abilities. Id. at 248.

In other words, the IEP must confer a meaningful educational benefit in light of a student’s individual needs and potential. See T.R. ex rel. N.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 578 (3d Cir. 2000).

Not only must an IEP be reasonably calculated to provide meaningful educational benefit, it must also be provided in the least restrictive environment. See 20 U.S.C. § 1412(a)(5)(A). To the maximum extent appropriate, children with disabilities are to be educated with children without disabilities. Ibid. Thus, removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Ibid. Indeed, this provision evidences a “strong congressional preference” for integrating children with disabilities in regular classrooms. Oberti v. Bd. of Educ. of the Borough of Clementon Sch. Dist., 995 F.2d 1204, 1214 (3d Cir. 1993).

The Third Circuit has emphasized that just because a child with disabilities might make greater academic progress in a segregated special education classroom does not necessarily warrant excluding that child from a general education classroom or offering the same educational experience that is generally provided for nondisabled children:

Thus, a determination that a child with disabilities might make greater academic progress in a segregated, special education class may not warrant excluding that child from a regular classroom environment. We emphasize that the Act does not require states to offer the same educational experience to a child with disabilities as is generally provided for nondisabled children. To the contrary, states must address the unique needs of a disabled child, recognizing that that child may benefit differently from education in the regular classroom than other students. In short, the fact that a child with disabilities will learn differently from his or her education within a regular classroom does not justify exclusion from that environment.

[Id. at 1217 (citations omitted).]

Finally, the United State Supreme Court warned in Rowley that courts must be careful to avoid imposing their own preferred view of educational methods upon the States. Rowley, 458 U.S. at 207. In particular, the Supreme Court noted that the Act left the primary responsibility for formulating the educational program—and for choosing the most suitable educational method—to the child study team. Ibid. “In the face of such a clear statutory directive,” the Court stated, “it seems highly unlikely that Congress

intended courts to overturn a state's choice of appropriate educational theories . . . .” Id. at 207-08. Therefore, the Rowley Court concluded that questions of methodology are for resolution by the States once the requirements of the Act have been met. Id. at 208.

Finally, a program and placement does not turn on the intensity of the services or the superiority of the program. Calisle Area School v. Scott P., 62 F.3d 520, 535 (3d Cir. 1995). Despite a parent's best intentions in attempting to seek the optimal placement of his or her child, the standard is not what is optimal but what is appropriate. Ibid. A program is appropriate if it confers some educational benefit; it need not be the superior alternative. Ibid. The Act does not require more. Ibid. In short, an IEP must be designed to confer some educational benefit in the least restrictive educational environment. Ibid.

The parents assert that the IEP offered by the District for the 2025–2026 school year does not offer FAPE, and that the District also failed to provide FAPE during the prior two school years. The petitioners assert, primarily, that the District's program does not provide the intensive ABA supports that C.B. requires, as reported by Dr. Fiorile, and that the District should be ordered to place C.B. in an out-of-district ABA program. Petitioners also assert that they are entitled to compensatory education for the District's denial of FAPE, and for failing to provide the required speech, OT and PT sessions.

Concerning the petitioners' request for an out-of-district placement, this is not a unilateral placement matter. My task is to determine whether the current IEP and prior programs offered by the District offered FAPE, not to determine whether an unspecified out-of-district program or placement would be an appropriate placement for C.B. As with unilateral placement matters, it is the petitioners' burden to prove that any chosen out-of-district placement is appropriate or reasonable. Here, aside from Dr. Fiorile's general list of potential out-of-district schools, there is no evidence regarding the special education or educational program or services provided by any particular out-of-district placement, and there is no evidence regarding whether any such placement can even provide FAPE. Even if it is determined that the District denied C.B. FAPE, it would be inappropriate for me to order the District to place the child out-of-district, especially since there has been no determination that the District is unable to provide C.B. with an appropriate program. While it may be that one or some of the out-of-district programs referenced by Dr. Fiorile

could provide a more intensive ABA services, and may even be an optimal placement for C.B., the standard is not what is optimal but what is sufficiently appropriate to confer some educational benefit in the least restrictive educational environment.

Regarding the 2023–2024 IEP and school year, given that the District failed to offer the opinion that the program provided at the Quitman school was appropriate; that Callahan recommended additional supports and a more robust ABA-based program than that offered at Quitman; and that the District simply failed to demonstrate, by a preponderance of the evidence, that the program at the Quitman school was appropriate or that C.B. made meaningful progress there, I **CONCLUDE** that the District failed to provide C.B. FAPE during the 2023–2024 school year.

Regarding the 2024–2025 school year, given my findings of fact, and particularly that C.B. should have been provided with a personal aide early in the school year; that he did not receive about one-third of the speech therapy sessions provided for in the IEP; and that the District failed to demonstrate that C.B. made meaningful progress that year, especially in his related services, I **CONCLUDE** that the District failed to provide FAPE during the 2024–2025 school year.

I also **CONCLUDE** that the District failed to confer C.B. FAPE in the 2025–2026 IEP because it does not provide for a personal aide, as he requires. While I recognize that C.B. currently has a personal aide in the classroom, it is problematic that this is not reflected in the IEP, which only provides for a shared aide, as there is no guarantee that the one-to-one aide will remain in place.

In the IDEA, Congress gave courts “broad discretion in granting equitable relief to disabled children and their families.” Ferren C. v. Sc. Dist. Of Philadelphia, 595 F. Supp. 2d 566, 575 (E.D. Pa. 2009), *aff’d*, 612 F.3d 712 (3d Cir. 2010). Given the deprivation of FAPE here, I **CONCLUDE** that C.B. is entitled to compensatory education. More specifically, equitable relief should include: an amendment to the current IEP to provide C.B. with a personal aide; providing the parents with the option of receiving parent training virtually if they are unable to attend in person; an immediate implementation of a toilet training program or protocol; and those related services that were not provided over the

past two year, including 49 sessions of speech therapy, 17 sessions of OT, and nine PT therapy sessions.

**ORDER**

Based on the foregoing, I hereby **ORDER** as follows:

- (1) that the District amend the 2025–2026 IEP to provide C.B. with a personal aide;
- (2) that the District provide the parents an opportunity to participate virtually in parent-training;
- (3) that the District immediately implement a toilet training program for C.B. and work towards the toilet training goal(s) outlined in the 2025–2026 IEP; and
- (4) that the District provide petitioners with the following compensatory education:
  - 49 thirty-minute sessions of speech therapy;
  - 17 thirty-minute sessions of occupational therapy;
  - 9 thirty-minute sessions of physical education.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2025) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2025). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

\_\_\_\_\_  
January 9, 2026  
DATE

  
\_\_\_\_\_  
**SUSANA E. GUERRERO, ALJ**

Date Received at Agency \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

jb

**APPENDIX**

**LIST OF WITNESSES**

For Petitioners:

T.B.

Elizabeth Callahan, M.A., BCBA

Carol Fiorile, Ph.D., BCBA-D

For Respondent:

Dr. Cheryl Myrie

James Baron

Shelley Bertino

**LIST OF EXHIBITS IN EVIDENCE**

Joint Exhibits:

- J-1 2021 3-8 Initial Referral from New Jersey Early Intervention System
- J-2 2021 3-17 Evaluation Determination Plan
- J-3 2021 4-19 Occupational Therapy Evaluation - Delta-T Group
- J-4 2021 4-23 Speech Language Assessment - Delta-T Group
- J-5 2021 5-21 Physical Therapy Evaluation -Kid Clan
- J-6 2021 6-10 Feeding Assessment
- J-7 2021 7-3 Social Work Assessment Report
- J-8 2021 7-22 Eligibility Conference Report
- J-9 2021 7-22 Initial IEP
- J-10 2021–2022 IEP Progress Reports
- J-11 2022 2-24 Notice of Additional Assessments Requested
- J-12 2022 3-14 Augmentative Communication Assessment
- J-13 2022 4-7 Annual IEP
- J-14 2022–2023 IEP Progress Reports
- J-15 2023 2-8 Reevaluation Determination Plan

- J-16 2023 3-3 Occupational Therapy Evaluation - Delta-T Group
- J-17 2023 3-16 Psychological Evaluation
- J-18 2023 3-17 Educational Assessment
- J-19 2023 3-24 Speech and Language Assessment
- J-20 2023 3-31 Neuropsychiatric/Neurodevelopmental Evaluation - Dr. Kavita Sinha
- J-21 2023 4-7 Functional Behavioral Assessment Report
- J-22 2023 5-9 Eligibility Conference Report
- J-23 2023 5-10 IEP
- J-24 2023–2024 IEP Progress Reports
- J-25 2023–2024 Report Card
- J-26 2023–2024 Progress Reports
- J-27 2023–2024 Attendance Records
- J-28 2023–2024 Nurse Visit Log
- J-29 2024 3-5 Program Evaluation - Elizabeth Callahan
- J-30 2024 6-6 Proposed IEP
- J-31 2024 - Summer ESY Progress Report
- J-32 2024 9-30 IEP Amendment
- J-33 2024 10-7 Parent Consent for Program Review - Elizabeth Callahan
- J-34 2024 10-28 ACE Core Skills Assessment, Goals and Summary
- J-35 2024 12-10 Program Evaluation Report - Elizabeth Callahan
- J-36 2024–2025 IEP Progress Reports
- J-37 2024–2025 ACE Progress Report and Snapshot
- J-38 2024–2025 Report Card
- J-39 2024–2025 Progress Reports
- J-40 2024–2025 Attendance Records
- J-41 2024–2025 Bell Schedule
- J-42 2024–2025 Toileting Data
- J-43 2024–2025 Nurse Visit Log
- J-44 2025 4-7 Reinforcer Assessment Report
- J-45 2025 5-8 Annual IEP
- J-46 2025 5-23 Notice of Additional Assessments Requested

J-47	2025 6-16 Augmentative and Alternative Communication Evaluation
J-48	2025 - Summer ESY Progress Report
J-49	2025 7-28 ESY Summary Report
J-50	2025 7-29 Due Process Petition
J-51	2025 7-31 ESY Progress Snapshot
J-52	2025 9-12 Answer to Due Process Petition
J-53	2025 9-24 ACE Progress Snapshot Report
J-54	2025 9-24 Behavior Update
J-55	2025 9-24 Mastered Targets Report
J-56	2025 9-24 Toileting Summary
J-57	2025 10-27 Behavior Update
J-58	2025 10-27 ACE Progress Snapshot Report
J-59	2025–2026 Nurse Visit Records
J-60	Related Service Logs
J-61	Health Records
J-62	Parent Correspondence
J-63	ACE Q2 - Q4 Assessment
J-64	2024 11-11-2025 5-13 Toileting Notes
J-65	Correspondence, March 8, 2022
J-66	Correspondence, April 14, 2022
J-67	Correspondence, November 23, 2022
J-68	Correspondence, August 7, 2023
J-69	Email, March 28, 2024
J-70	Correspondence, April 29, 2024
J-71	Correspondence, May 8, 2024
J-72	Email, October 21 to November 1, 2024
J-73	Email, February 19, 2025
J-74	Correspondence, July 11, 2025

For Petitioners:

P-1to P-4	Not in evidence
P-5	Report by Carol Fiorile
P-6	Curriculum Vitae of Carol Fiorile

For Respondent:

- R-1 Not in evidence
- R-2 Not in evidence
- R-3 Curriculum Vitae of Shelley Bertino
- R-4 Curriculum Vitae of Cheryl Myrie
- R-5 Not in evidence
- R-6 E-mail correspondence